

Neutral Citation No: [2017] NICoroner 3

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Ref: 2017NICORONER3

Delivered: 07/07/2017

IN THE CORONERS COURT FOR NORTHERN IRELAND

IN THE MATTER OF

AN INQUEST TOUCHING UPON THE DEATH OF MR JOSEPH PARKER

Before: Coroner Joseph McCrisken

Introduction

[1] Mr Joseph Parker died on 11 December 1971 from bullet wounds of the thighs. An inquest was held on 15 June 1972 before Coroner for Belfast, Mr Elliott, and a jury. An open verdict was returned.

[2] On 25 September 2013 the Attorney General for Northern Ireland, pursuant to section 14(1) of the Coroners Act (Northern Ireland) 1959 ('the 1959 Act'), directed that a new inquest be held inquiring into the death of Mr Parker.

[3] I am to hold an inquest into Mr Parker's death commencing on 13 November 2017.

Application for exhumation.

[4] The next of kin, represented by Mr Fahy BL, have asked that I consider using my powers under section 11(4) of the 1959 Act and order the exhumation of the body of Mr Parker.

Background.

[5] Although it would not be appropriate for me to outline all of the evidence contained within the inquest papers it is, I believe, necessary to identify certain features of the evidence which are relevant to this application.

[6] Mr Joseph Parker was present at a place known as Toby's Hall on the evening of 10 December 1971 when a number of soldiers entered the hall. The inquest papers contain statements from several soldiers who were present at Toby's Hall on the evening of 10 December 1971. The statements describe how soldiers entered the hall and how it came to be that shots were fired. None of the soldiers described anyone discharging a weapon inside the hall except for military personnel. Some of those soldiers discharged their weapons.

[7] Civilian witnesses also provided statements. Theresa Watt, Mr Parker's sister, described a soldier down on one knee with his gun about waist high. He fired a "good number of shots". Elizabeth Donnelly described a soldier kneeling down on one knee and firing his gun which was straight out in front of him. Joseph McAllister described a soldier crouching down or kneeling down and he "swivelled his gun while he was shooting". Francis Johnston described a soldier shooting from a rifle which was at waist level. James Guiler described a soldier dropping to his knee and firing at least three shots from his rifle towards the side of the hall. Paul Robinson described one soldier holding his gun at hip height and "spraying the place with bullets".

[8] Once the soldiers left the hall Mr Parker was found injured lying on the floor and was taken to hospital where he died a short time later. Soldier J, who was present outside the hall, described a man dressed in a long light coloured coat exit the hall. This man then fired off four or five rounds aimed at no particular target. When challenged by the soldiers this man, according to Soldier J, ran back into the hall.

[9] A post mortem examination was performed by State Pathologist Dr (later Professor) Thomas Marshall on 11 December 1971. Dr Marshall found the following gunshot wounds;

1. *A neat entrance hole on the outer side of the left thigh 66cm above the soles of the feet.*
2. *A ragged wound 15x10cm on the inner side of the left thigh.*
3. *An oval wound 3x1.5cm on the inner side of the right thigh.*
4. *Two exit holes 2cm and 1cm close together on the outer side of the right thigh.*

[10] Dr Marshall concluded that;

- i. *Death was due to a bullet wound of the thighs.*
- ii. *The bullet broke up and two fragments exited separately through holes on the outer side of the right upper thigh.*
- iii. *The injuries were similar to those made by a high velocity bullet...*

[11] Dr Marshall noted the following findings from an X-ray report;

1. *Comminuted fracture of left femoral shaft.*
2. *Comminuted fracture of right femur.*
3. *Metallic fragments in close relation to the fracture of the right femur.*

The original X-ray slides have since been destroyed.

[12] In preparation for the holding of a new inquest the former State Pathologist for Northern Ireland, Professor Jack Crane, produced a written review of the original autopsy findings. In a section titled '*Additional comments in respect of circumstances of shooting of Joseph Parker*' Professor Crane commented;

"1. It is my opinion that Mr Parker was standing upright when initially shot and that a result of the injuries to both thigh bones, he would have immediately collapsed to the floor.

2. The bullet passed roughly horizontally across both thighs at a height approximately 66cm above floor level. The weapon must have been held horizontally at this relatively low level to inflict the thigh wounds.

3. The entrance wound on the outer side of the left thigh was caused by an intact, and what would appear to have been an undamaged bullet. It was not as a result of a ricochet or bullet fragment.

4. The injuries were consistent with those caused by a high velocity bullet such as that fired from a military type rifle.

5. An attempt should have been made to retrieve the bullet fragments from the right thigh (as seen on X-Ray). Examination of these fragments could have assisted in (a) determining the type and calibre of the bullet and (b) possibly even assist in determining the precise weapon used. It is unclear why this was not done.

6. The gunshots could not have been caused by any of the bullets that had been fired into the roof of the building.

7. It is not possible to determine if the injuries sustained by the deceased were as a result of someone firing into the club from outside or by a person inside the hall. If the

person firing a weapon was outside the hall then he would have to have fired through the open doors of the hall and not through the walls..." [My emphasis]

[13] On 28 March 2017 the next of kin responded to the written review prepared by Professor Crane. They said that there was a clear conflict between the evidence of those civilians present on 10 December 1971 and the military. The civilian witnesses, in their written statements, described a soldier within the hall shooting in the direction of the civilians in the hall with his weapon at waist height. The military witnesses described shooting into the ceiling.

[14] At paragraph 7 of the written submission the next of kin say that the body of Mr Parker should be exhumed to enable recovery of the bullet fragments identified by the original X-Ray.

[15] I invited both the next of kin representatives and those representing the Ministry of Defence to make oral submissions. I heard oral submissions on 26 April 2017.

[16] Mr Fahy BL supplemented his written submission by indicating that the next of kin consider that the bullet fragments are of important evidential value. He told me that exhumation of the body of Mr Parker might allow the bullet fragments not recovered by Dr Marshall to now be recovered and forensically examined. Mr Fahy said that if a sufficient quantity of material was recovered then it might also be possible to trace the weapon and the soldier who fired it. Alternatively an examination of the fragment might determine that the weapon had not been fired by a member of the military patrol but by another person, perhaps the gunman described by Soldier J.

[17] I also called Professor Crane to the oral hearing. In his opinion the size of the fragment would be crucial in determining its forensic importance. The original X-Ray has been disposed of and it is not possible to say what size of fragment or fragments remain in the body. Professor Crane noted that two fragments of the single bullet which struck Mr Parker had exited through two holes and that Dr Marshall had not sought to recover the fragments identified by X-ray. Professor Crane clarified the comment he made at paragraph 5 of his review by saying that although an examination *at the time* may have assisted in determining the precise weapon used that situation is very different today. If the weapon does not exist and has been destroyed, as seems highly likely, then it would not be possible to determine from a bullet casing, if such a casing was even recovered, which weapon had fired it. If the fragment is lodged in bone then it might be relatively easy to find but if it was lodged in muscle then it might be extremely difficult to find within the remains.

[18] To assist me in making this decision I also sought advice from Professor Sue Black, an expert in anatomy and forensic anthropology at the University of Dundee who has been involved in previous legacy inquests. My solicitor spoke to her directly on 30 May 2017. Professor Black said that if the original X-ray showed fragments then these should still be present within the remains. It was her opinion that the fragments could be recovered but the size would be important in terms of identifying if the fragment is metal or bone. She could not give an opinion in relation to ballistics but said that in her experience a bullet fragment needed to be large enough to identify its 'ballistic tool mark'.

[19] My solicitor then spoke to Mr Johnathan Greer, a ballistics expert with Forensic Science Northern Ireland, on 5 June 2017. He advised that the larger the bullet fragment the greater likelihood that the calibre and type of weapon used could be identified.

[20] The MoD, represented by Mr Coll Q.C. has adopted a neutral stance in relation to this application.

Relevant law.

[21] The current provision governing the making of an order to exhume by a coroner in this jurisdiction is contained within section 11 of the 1959 Act:

“11 – Coroner may take possession of body.

- (1) Where a coroner is informed that there is within his district the body of a deceased person and there is reason to believe that the deceased person died in any of the circumstances mentioned in section seven or section eight he shall instruct a constable to take possession of the body and shall make such investigation as may be required to enable him to determine whether or not an inquest is necessary.*
- (2) For the purposes of an investigation under sub-section (1) the coroner may view the body but shall not be obliged to do so.*
- (3) The coroner may, with the consent of the Lord Chancellor, employ such persons as he considers necessary to assist him in such investigation.*
- (4) For the purposes of exercising his powers under this section, a coroner may direct the exhumation of any body which has been buried within his district and the consent of any other authority or person to any exhumation so directed shall not be required by any regulations...”*

[22] Section 11(4), therefore, enables a coroner to direct the exhumation of a body which has been buried within his district “for the purpose of exercising his powers”

under the section. Section 11(1) requires a coroner, in certain prescribed circumstances, to instruct a constable to take possession of the body and to make such investigation as may be required to enable him to determine *whether or not an inquest is necessary*.

[23] In the present case, since (1) an inquest has already been held and (2) a new inquest has been directed, the question of whether an inquest is necessary does not fall to be determined.

[24] A strict reading of section 11(4) would lead to a conclusion that I do not possess the power to make an order for exhumation of the body in this case since that power is to be used only to determine the preliminary question as to whether or not an inquest is necessary.

[25] In England and Wales the Coroners and Justice Act 2009 ('the 2009 Act') s.32 Sch.5 para 6 governs the exhumation of a body;

"Exhumation of body for examination

6(1) A senior coroner may order the exhumation of a person's body if sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies if –

(a) the body is buried in England and Wales (whether or not within the coroner area for which the coroner is appointed), and

(b) the coroner thinks it necessary for the body to be examined under section 14.

(3) This sub-paragraph applies if –

(a) the body is buried within the coroner area for which the coroner is appointed, and

(b) the coroner thinks it necessary for the body to be examined for the purpose of any criminal proceedings that have been instituted or are contemplated in respect of—

(i) the death of the person whose body it is, or

(ii) the death of another person who died in circumstances connected with the death of that person.

Section 14 of the 2009 Act allows a coroner to order a post mortem examination on the body of a person.

[26] The terms of the 2009 Act clearly enable a coroner in England and Wales to order an exhumation if he considers it is necessary to allow a post mortem examination to take place. The s.32 sch.5 para 6 power replaced the, arguably wider, power contained within section 23 of the Coroners Act 1988 which allowed a coroner to order exhumation “for the purpose of his holding an inquest into that person’s death...”.

[27] A coroner is a public authority for the purposes of the Human Rights Act 1998 (‘HRA’) and as such I must comply with the requirements of the European Convention on Human Rights (‘the Convention’). In particular I am obliged to read and give effect to legislation in a way which is compatible with Convention rights. I am satisfied that article 2 of the Convention is engaged here and, in accordance with the HRA I must interpret the 1959 Act in a way which complies with article 2.

[28] I consider that section 11(4), if properly read in accordance with the HRA, confers upon me a power to order the exhumation of the body of Joseph Parker if I decide to do so.

[29] In terms of any legal test that must be applied I have considered section 15 of the 1959 Act;

"15 Inquest without exhuming the body.

Where the body of any person upon whom it is necessary to hold an inquest had been buried and it is known to the coroner that no good purpose will be effected by exhuming the same for the purposes of an inquest he may proceed to hold the inquest without having exhumed the body."

[30] This provision enables a coroner to proceed to hold an inquest without exhuming a body where it is known to the coroner that *no good purpose* would be effected by exhumation. Therefore, it seems to me that if I am satisfied that there is a good purpose for exhuming the body then I should order the exhumation. I consider the standard of proof to be the balance of probabilities.

Discussion.

[31] Having decided that I have a power to order exhumation and established an appropriate test I must now consider if a good purpose to order exhumation has been established to the required standard.

[32] In his book *Coroners Law and Practice in Northern Ireland* the former Senior Coroner for Northern Ireland, Mr John Leckey, cautions that the power to order exhumation;

“...must be exercised reasonably and responsibly, since the exhumation is a traumatic and distressing experience for the family, apart from being expensive and time consuming. The coroner should therefore exercise the power with caution and make an order only where there is cogent evidence that a post mortem examination will assist...” (Paragraph 5.14)

[33] This application is essentially based upon the review carried out by Professor Crane and in particular comments 5 and 7. In summary, the next of kin suggest that exhumation might allow fragments of the bullet to be recovered. Forensic analysis might then lead to a determination of the weapon fired and the soldier who fired the weapon. The next of kin also say that the statement of Soldier J casts some doubt on the question of who fired the fatal bullet.

Conclusion.

[34] It seems to me that there is a no good reason for exhuming the body of Mr Parker for the following reasons;

- (a) Professor Crane concluded that the injuries were consistent with a high velocity bullet such as those fired from a military weapon.
- (b) In Professor Crane’s opinion the entrance wound was caused by an intact bullet. It was not as a result of a ricochet or bullet fragment. It seems to me, having considered the evidence of Soldier J that the man who fired outside the hall fired aimlessly, extremely unlikely that any of these bullets struck Mr Parker so as to cast doubt on original post-mortem findings and those of Professor Crane.

- (c) The post-mortem finding that Mr Parker was shot at a level 66cm above the soles of his feet is, presently at least, entirely consistent with some of the evidence provided by the civilians. They describe a soldier on his knee shooting from waist height.

- (d) The suggestion that an examination of bullet fragments might lead to an identification of the person who fired the weapon is not a good reason to exhume because;
 - a. As far as I have been aware the weapons used in 1971 have been destroyed making matching a bullet with a weapon impossible.

 - b. In any event it is not the function of an inquest to try and trace potential suspects. If the police wish to apply to exhume Mr Parker's body as part of a criminal investigation they are, of course, at liberty to do so.

[35] For the reasons outlined above the present application is refused. However, I will keep this matter under review before and during the inquest. Presently, significant resources are being deployed by the Coroners Service in an effort to obtain further evidence and to trace the soldiers involved. If cogent evidence is provided in advance of the inquest or during the inquest that discloses a good purpose to exhume the body then I am prepared to re-visit my decision.

7 July 2017.